

ESTTA Tracking number: **ESTTA320835**

Filing date: **12/08/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Margaritaville Enterprises, LLC
Granted to Date of previous extension	12/13/2009
Address	256 Worth Avenue, Suite Q-R Palm Beach, FL 33480 UNITED STATES
Attorney information	David Ehrlich Fross Zelnick 866 UN Plaza New York, NY 10017 UNITED STATES ehrllich-docket@fzllz.com Phone:212 813-5920

Applicant Information

Application No	77668526	Publication date	06/16/2009
Opposition Filing Date	12/08/2009	Opposition Period Ends	12/13/2009
Applicant	Euro-Pro Operating LLC 1210 Washington Street West Newton, MA 02465 UNITED STATES		

Goods/Services Affected by Opposition

Class 007. All goods and services in the class are opposed, namely: ELECTRIC FOOD BLENDERS

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3151524	Application Date	07/21/2003
Registration Date	10/03/2006	Foreign Priority Date	NONE
Word Mark	MARGARITAVILLE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 007. First use: First Use: 2006/06/14 First Use In Commerce: 2006/06/14 Electric food and drink blenders
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U.S. Registration No.	3501784	Application Date	03/26/2008
Registration Date	09/16/2008	Foreign Priority Date	NONE
Word Mark	MARGARITAVILLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1987/11/00 First Use In Commerce: 1987/11/00 Bar services		

U.S. Registration No.	1926809	Application Date	01/22/1990
Registration Date	10/17/1995	Foreign Priority Date	NONE
Word Mark	MARGARITAVILLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1976/12/00 First Use In Commerce: 1976/12/00 restaurant		

U.S. Registration No.	2284131	Application Date	07/21/1998
Registration Date	10/05/1999	Foreign Priority Date	NONE
Word Mark	MARGARITAVILLE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1999/08/01 First Use In Commerce: 1999/08/01 tequila

U.S. Registration No.	1877860	Application Date	10/12/1993
Registration Date	02/07/1995	Foreign Priority Date	NONE
Word Mark	MARGARITAVILLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1987/00/00 First Use In Commerce: 1987/00/00 non-alcoholic ingredient preparations for making alcoholic cocktails		

Attachments	77432027#TMSN.jpeg (1 page)(bytes) 75571395#TMSN.gif (1 page)(bytes) Signed Notice of Opposition - SN 77-668,526 (F0552190).PDF (10 pages)(447321 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/dwe/
Name	David Ehrlich
Date	12/08/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X	:	
MARGARITAVILLE ENTERPRISES LLC,	:	
	:	Opposition No. _____
Opposer,	:	
v.	:	
	:	Serial No. 77/668,526
EURO-PRO OPERATING LLC,	:	
	:	
Applicant.	:	
-----X	:	

NOTICE OF OPPOSITION

Margaritaville Enterprises, LLC (“Margaritaville”) opposes the above application to register FIESTAVILLE (the “Application”) because Margaritaville will be damaged by the registration of the Application.

The grounds for opposition are:

1. Applicants seek to register FIESTAVILLE for use in connection with “electric food blenders,” based on intent-to-use.
2. Margaritaville has prior rights in the mark MARGARITAVILLE for a wide variety of related goods and services.
3. Applicant’s use and registration of FIESTAVILLE is likely to cause confusion as to the source of Applicant’s goods based on Margaritaville’s prior use and registration of its famous mark MARGARITAVILLE.

MARGARITAVILLE’S BACKGROUND

4. Margaritaville is a Delaware limited liability company with a principal address at 256 Worth Avenue, Suite Q-R, Palm Beach, Florida 33480.

5. Jimmy Buffett, an internationally-famous musician, songwriter and entertainer, is an owner of Margaritaville's parent company, Margaritaville Holdings LLC.

6. Margaritaville is the successor-in-interest to trademarks filed and registered by Jimmy Buffett.

7. Margaritaville provides goods and services associated with Jimmy Buffett and Jimmy Buffett-related themes such as beaches, tropics, leisure activities and islands.

8. Margaritaville regularly commercializes Jimmy Buffett's songs, most notably, "Margaritaville."

MARGARITAVILLE'S PRIORITY OF USE

9. The MARGARITAVILLE mark is a coined term based on Jimmy Buffett's famous "Margaritaville" song. The "Margarita" in "Margaritaville" is the frozen Mexican cocktail, containing tequila, lime or lemon juice, ice, and an orange-flavored liqueur, which is typically mixed in an electric food blender.

10. Jimmy Buffett released the song "Margaritaville" in 1977, on the album *Changes in Latitudes, Changes in Attitudes*. "Margaritaville" is Jimmy Buffet's signature song.

11. Margaritaville owns and operates a chain of restaurants, bars and nightclubs called MARGARITAVILLE.

12. Margaritaville's MARGARITAVILLE restaurants, bars and nightclubs are located throughout the United States in:

- a. Uncasville, Connecticut;
- b. Key West, Florida;

- c. Orlando, Florida;
- d. Panama City Beach, Florida;
- e. Myrtle Beach, South Carolina;
- f. New Orleans, Louisiana;
- g. Glendale, Arizona; and
- h. Las Vegas, Nevada.

13. Margaritaville also licenses several MARGARITAVILLE bars, restaurants and nightclubs in areas frequently visited by United States tourists, including:

- a. Cancun, Mexico;
- b. Coszumel, Mexico;
- c. Montego Bay, Jamaica;
- d. Negril, Jamaica;
- e. Ocho Rios, Jamaica;
- f. Grand Turk; and
- g. Grand Cayman.

14. In addition to restaurants, bars and nightclubs, Margaritaville or its licensees use the MARGARITAVILLE mark in commerce in connection with numerous goods and services, including tequila, clothing, Margarita cocktail mixes, and electric food and drink blenders. A copy of a web page describing the MARGARITAVILLE electric food and drink blender is attached as Exhibit A.

15. Margaritaville owns U.S. Registration No. 3,151,524 for MARGARITAVILLE for electric food and drink blenders, in International Class 7.

16. Margaritaville owns two U.S. trademark registrations for the MARGARITAVILLE mark for restaurant or bar services, that is, services which would involve use of an electric food blender:

- a. Registration No. 3,501,784 for MARGARITAVILLE for bar services, in International Class 43;
- b. Registration No. 1,926,809 for MARGARITAVILLE for restaurants in International Class 42.

Among its many other trademark applications and registrations, Margaritaville also owns the following U.S. trademark registrations goods that could be prepared in an electric food blender:

- a. Registration No. 2,284,131 for MARGARITAVILLE for tequila, in International Class 33.
- b. Registration No. 1,877,860 for MARGARITAVILLE for non-alcoholic ingredient preparations for making alcoholic cocktails in Class 32.

17. The lyrics for the famous Jimmy Buffett song “Margaritaville” are attached as Exhibit B.

18. The song is the first person narrative of a musician staying in an unnamed tropical tourist spot, who says he has nothing to show for his stay except a brand new tattoo, which he apparently got while drunk, since he does not remember how he got it. The singer refers to the tattoo as “a real beauty, a Mexican cutie,” suggesting that the singer is in a tropical tourist destination in Mexico. The song also repeats a line “wasted away again in Margaritaville” several times, and says that “there is booze in the blender”

that will render the “frozen concoction that helps me hang on,” referring to Margarita cocktails.

19. The definition of “fiesta” in the Merriam-Webster on-line dictionary is “festival; specifically: a saint’s day celebrated in Spain and Latin America with processions and dances.” On information and belief, typical American consumers associate the word “fiesta” with festivals in Mexico.

20. Due to the longstanding use of the mark, the MARGARITAVILLE mark is strongly associated with Margaritaville and Jimmy Buffett.

21. By virtue of Margaritaville’s continuous, exclusive and widespread use of the MARGARITAVILLE mark, over many years, Margaritaville is entitled to a broad scope of protection for this mark.

APPLICANT’S BACKGROUND

22. Notwithstanding Margaritaville’s prior rights in the MARGARITAVILLE mark, Applicant filed the above-referenced trademark application for registration of FIESTAVILLE for “electric food blenders.” Such blenders are often used to prepare frozen alcoholic drinks, such as Margarita cocktails.

23. Upon information and belief, Applicant was aware of Margaritaville’s MARGARITAVILLE mark when Applicant adopted its mark.

LIKELIHOOD OF CONFUSION

24. Opposer repeats and realleges each and every allegation set forth in Paragraphs 1 through 23, as though set forth herein.

25. The mark FIESTAVILLE that Applicant seeks to register so resembles Margaritaville’s famous MARGARITAVILLE mark in connotation, that the use and


registration of Applicant's mark is likely to cause confusion, mistake and deception as to the source or origin of Applicant's goods within the meaning of 15 U.S.C. §1052(d), and will damage Margaritaville and the goodwill and reputation symbolized by Margaritaville's MARGARITAVILLE mark within the meaning of 15 U.S.C. §1063 (a).

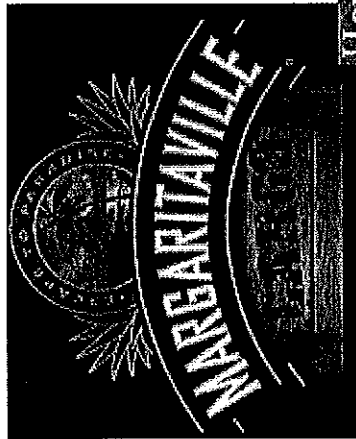
WHEREFORE, Opposer prays that the instant opposition be sustained and registration be refused.

Dated: New York, New York
December 8, 2009

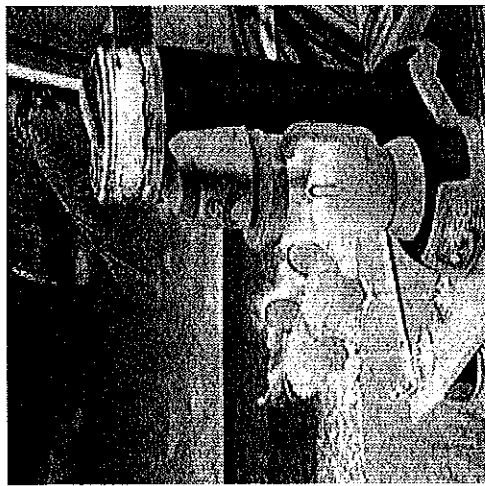
Respectfully submitted,

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: 
David Ehrlich
Attorneys for Opposer
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(212) 813-5900
(Our Ref: MVLE USA TC 0906447)



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NBMGDM0900
\$299.99



This product qualifies for **FREE SHIPPING!**

Margaritaville® Explorer™ Cordless Frozen Concoction Maker™

Here's a discovery as earth shattering as the New World — the Margaritaville® Explorer™ Cordless Frozen Concoction Maker™. With no need for a cord, this portable powerhouse can lead your party into uncharted territories. Take it tailgating. Throw a bash at the beach. Whip up frozen drinks right on your boat. Yes, this is Paradise Unplugged.

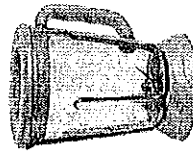
Specifications:

- Powerful DC shaving and blending motors produce restaurant quality frozen drinks without a cord.
- Heavy-duty 18 volt Ni-Cd battery pack creates up to 60 drinks on a single charge.
- Pre-programmed settings automatically shave ice and blends up to 36 ounces of frozen drink.
- Fully cordless operation satisfies your thirst for frozen drinks - anywhere, anytime.
- Rugged design, premium graphite finish with mango accent color, durable oversized controls.
- Charging base and one 18V battery pack included.

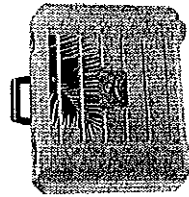
Complete The Party:



18-Volt NiCd Battery

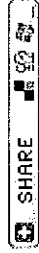
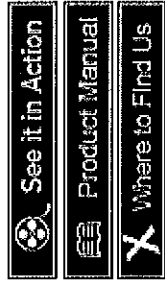


Shatter Proof 36oz. Jar

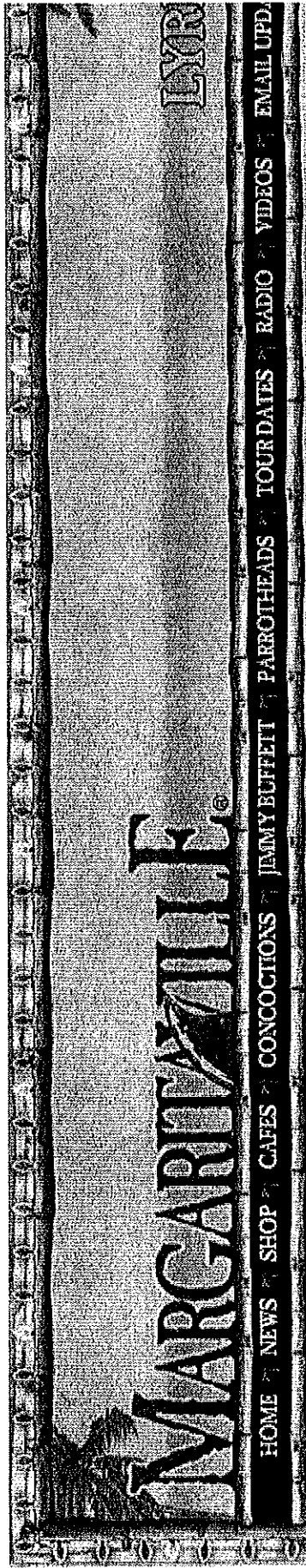


Travel Hard Case

EXHIBIT A



Jarden Consumer Solutions is not responsible for typographical or photographic errors. Prices and specifications are subject to change without notice.
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[JIMMY BUFFETT](#) > Lyrics

Songs You Know By Heart

Think you know all the Jimmy Buffett songs by heart? Searching for a few lyrics? Wonder "Wastin'" or "Wasted"? Find the answers to lyric questions that bother you so by using the below.

Search for a song:

GO

Margaritaville
Boats, Beaches, Bars and Ballads

MARGARITAVILLE
Jimmy Buffett

Nibblin' on sponge cake,
watchin' the sun bake;
All of those tourists covered with oil.
Strummin' my six string on my front porch swing.
Smell those shrimp--
They're beginnin' to boil.



EXHIBIT B

Wasted away again in Margaritaville,
Searchin' for my lost shaker of salt.
Some people claim that there's a woman to blame,
But I know it's nobody's fault.

Don't know the reason,
Stayed here all season
With nothing to show but this brand new tattoo.
But it's a real beauty,
A Mexican cutie, how it got here
I haven't a clue.

Wasted away again in Margaritaville,
Searchin' for my lost shaker of salt.
Some people claim that there's a woman to blame,
Now I think, -- hell it could be my fault.

I blew out my flip flop,
Stepped on a pop top;
Cut my heel, had to cruise on back home.
But there's booze in the blender,
And soon it will render
That frozen concoction that helps me hang on.

Wasted away again in Margaritaville
Searchin' for my lost shaker of salt.
Some people claim that there's a woman to blame,
But I know, it's my own damn fault.
Yes, and some people claim that there's a woman to blame, And I know it's my own damn !

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